

3. Defendant conducts business and has an office in the Commonwealth of Pennsylvania and therefore, personal jurisdiction is established.

4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(1).

5. Declaratory relief is available pursuant to 28 U.S.C. §§ 2201 and 2202.

PARTIES

6. Plaintiff is a natural person residing in San Diego, California, 92127.

7. Plaintiff is a "consumer" as that term is defined by 15 U.S.C. § 1692a(3).

8. Defendant is a national debt collection company with corporate headquarters located at 507 Prudential Road in Horsham, Pennsylvania, 19044.

9. Defendant is a "debt collector" as that term is defined by 15 U.S.C. § 1692a(6), and repeatedly contacted Plaintiff in an attempt to collect a debt.

10. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

PRELIMINARY STATEMENT

11. The Fair Debt Collection Practices Act ("FDCPA") is a comprehensive statute, which prohibits a catalog of activities in connection with the collection of debts by third parties. See 15 U.S.C. § 1692 *et seq.* The FDCPA imposes civil liability on any person or entity that violates its provisions, and establishes general standards of debt collector conduct, defines abuse, and provides for specific consumer rights. 15 U.S.C. § 1692k. The operative provisions of the FDCPA declare certain rights to be provided to or claimed by debtors, forbid deceitful and

1 misleading practices, prohibit harassing and abusive tactics, and proscribe unfair or
2 unconscionable conduct, both generally and in a specific list of disapproved practices.

3 12. In particular, the FDCPA broadly enumerates several practices considered
4 contrary to its stated purpose, and forbids debt collectors from taking such action. The
5 substantive heart of the FDCPA lies in three broad prohibitions. First, a "debt collector may not
6 engage in any conduct the natural consequence of which is to harass, oppress, or abuse any
7 person in connection with the collection of a debt." 15 U.S.C. § 1692d. Second, a "debt
8 collector may not use any false, deceptive, or misleading representation or means in connection
9 with the collection of any debt." 15 U.S.C. § 1692e. And third, a "debt collector may not use
10 unfair or unconscionable means to collect or attempt to collect any debt." 15 U.S.C. § 1692f.
11 The FDCPA is designed to protect consumers from unscrupulous collectors, whether or not there
12 exists a valid debt, broadly prohibits unfair or unconscionable collection methods, conduct which
13 harasses, oppresses or abuses any debtor, and any false, deceptive or misleading statements in
14 connection with the collection of a debt.
15

16 13. In enacting the FDCPA, the United States Congress found that "[t]here is
17 abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many
18 debt collectors," which "contribute to the number of personal bankruptcies, to marital instability,
19 to the loss of jobs, and to invasions of individual privacy." 15 U.S.C. § 1692a. Congress
20 additionally found existing laws and procedures for redressing debt collection injuries to be
21 inadequate to protect consumers. 15 U.S.C. § 1692b.
22

23 14. Congress enacted the FDCPA to regulate the collection of consumer debts by debt
24 collectors. The express purposes of the FDCPA are to "eliminate abusive debt collection
25 practices by debt collectors, to insure that debt collectors who refrain from using abusive debt

1 collection practices are not competitively disadvantaged, and to promote consistent State action
2 to protect consumers against debt collection abuses.” 15 U.S.C. § 1692e.

3
4 **FACTUAL ALLEGATIONS**

5 15. At all times relevant, Plaintiff was an individual residing within the State of
6 California.

7 16. Upon information and belief, at all relevant times Defendant conducted business
8 in the State of California.

9 17. At all relevant times, Defendant was attempting to collect an alleged consumer
10 debt from Plaintiff.

11 18. The alleged debt at issue arose out of transactions, which were primarily for
12 personal, family, or household purposes.

13 19. Beginning in or around May 2010 and continuing through September 2010,
14 Defendant and its employees engaged in debt collection activities seeking payment from
15 Plaintiff.

16 20. Defendant and its employees identified as “Mr. Brunal”, “Mrs. Lightford” and
17 “Josh”, harassed Plaintiff in an attempt to collect the alleged debt.

18 21. Defendant and its employees harassed Plaintiff by making continuous calls to and
19 leaving voice messages on his cellular telephone number.

20 22. Plaintiff received phone calls and voice messages from Defendant on a number of
21 occasions, including but not limited to, calls on August 2, 2010, August 3, 2010 at 10:56a.m.;
22 August 11, 2010 at 12:40p.m.; August 12, 2010; August 13, 2010 at 3:39p.m.; August 16, 2010
23 at 4:18p.m.; August 18, 2010 at 10:38a.m.; and 11:18a.m.; August 19, 2010 at 11:19a.m.; and
24
25

1 August 29, 2010 at 12:42p.m., from the following phone numbers (800) 709-8625, (800) 413-
2 0134, (800) 209-8625 and (800) 289-8004. The undersigned has confirmed that the number
3 belongs to the Defendant. (See Exhibit A, Plaintiff's call log)

4 23. Defendant placed repeated calls to Plaintiff's cellular phone almost every day,
5 causing Plaintiff to receive, at times, more than four (4) collection calls a day.

6 24. On multiple occasions, Plaintiff terminated calls with Defendant, only to have
7 Defendant immediately call him back.

8 25. Defendant threatened Plaintiff that it would report this debt to the credit reporting
9 agencies, and to the best of Plaintiff's knowledge, no such reporting was ever made through the
10 date of filing this lawsuit.

11 26. After the initial communication with Defendant back on August 2, 2010, Plaintiff
12 has still not received a letter notifying him of his rights and privileges under the law, specifically
13 the right to dispute and/or seek validation of the alleged debt.

14 27. Upon information and belief, Defendant sought to collect a debt from Plaintiff
15 despite the fact that it had no knowledge of its validity.

16 28. Defendant's actions in attempting to collect the alleged debt were harassing,
17 abusive and highly deceptive.
18
19

20 CONSTRUCTION OF APPLICABLE LAW

21 29. The FDCPA is a strict liability statute. Taylor v. Perrin, Landry, deLaunay &
22 Durand, 103 F.3d 1232 (5th Cir. 1997). "Because the Act imposes strict liability, a consumer
23 need not show intentional conduct by the debt collector to be entitled to damages." Russell v.
24 Equifax A.R.S., 74 F. 3d 30 (2d Cir. 1996); see also Gearing v. Check Brokerage Corp., 233
25

1 F.3d 469 (7th Cir. 2000) (holding unintentional misrepresentation of debt collector's legal status
2 violated FDCPA); Clomon v. Jackson, 988 F. 2d 1314 (2d Cir. 1993).

3 30. The FDCPA is a remedial statute, and therefore must be construed liberally in
4 favor of the debtor. Sprinkle v. SB&C Ltd., 472 F. Supp. 2d 1235 (W.D. Wash. 2006). The
5 remedial nature of the FDCPA requires that courts interpret it liberally. Clark v. Capital Credit
6 & Collection Services, Inc., 460 F. 3d 1162 (9th Cir. 2006). "Because the FDCPA, like the
7 Truth in Lending Act (TILA) 15 U.S.C §1601 *et seq.*, is a remedial statute, it should be
8 construed liberally in favor of the consumer." Johnson v. Riddle, 305 F. 3d 1107 (10th Cir.
9 2002).

10 31. The FDCPA is to be interpreted in accordance with the "least sophisticated"
11 consumer standard. See Jeter v. Credit Bureau, Inc., 760 F.2d 1168 (11th Cir. 1985); Graziano
12 v. Harrison, 950 F. 2d 107 (3rd Cir. 1991); Swanson v. Southern Oregon Credit Service, Inc.,
13 869 F.2d 1222 (9th Cir. 1988). The FDCPA was not "made for the protection of experts, but for
14 the public - that vast multitude which includes the ignorant, the unthinking, and the credulous,
15 and the fact that a false statement may be obviously false to those who are trained and
16 experienced does not change its character, nor take away its power to deceive others less
17 experienced." Id. The least sophisticated consumer standard serves a dual purpose in that it
18 ensures protection of all consumers, even naive and trusting, against deceptive collection
19 practices, and protects collectors against liability for bizarre or idiosyncratic interpretations of
20 collection notices. Clomon, 988 F. 2d at 1318.
21
22
23
24
25

COUNT I
DEFENDANT VIOLATED THE
FAIR DEBT COLLECTION PRACTICES ACT

32. In its actions to collect a disputed debt, Defendant violated the FDCPA in one or more of the following ways:

- a. Defendant violated of the FDCPA generally;
- b. Defendant violated § 1692d of the FDCPA by harassing Plaintiff in connection with the collection of an alleged debt;
- c. Defendant violated § 1692d(5) of the FDCPA, when it caused the Plaintiff's telephone to ring repeatedly or continuously with the intent to harass, annoy or abuse Plaintiff;
- d. Defendant violated § 1692e of the FDCPA by using false, deceptive, or misleading representations or means in connection with the collection of a debt;
- e. Defendant violated § 1692e(5) of the FDCPA by threatening to take action that cannot legally be taken or that is not intended to be taken;
- f. Defendant violated § 1692e(10) of the FDCPA by using false representations or deceptive means to collect or attempt to collect a debt;
- g. Defendant violated § 1692f of the FDCPA by using unfair and unconscionable means with Plaintiff to collect or attempt to collect a debt;
- h. Defendant violated § 1692g of the FDCPA by failing to send written notification, within five (5) days after its initial communication with Plaintiff, advising Plaintiff of her rights to dispute the debt or request verification of the debt; and

- 1 i. Defendant acted in an otherwise deceptive, unfair and unconscionable manner
2 and failed to comply with the FDCPA.

3
4 **COUNT II**
5 **VIOLATION OF THE ROSENTHAL**
6 **FAIR DEBT COLLECTION PRACTICES ACT**
7 **§§ 1788-1788.32 (RFDCPA)**

8 33. Plaintiff incorporates by reference all of the above paragraphs of this Complaint
9 as though fully stated herein.

10 34. The Rosenthal Fair Debt Collection Practices Act ("RFDCPA"), Cal. Civ. Code
11 §§1788-1788.32 et seq., prohibits debt collectors from engaging in unfair or deceptive acts or
12 practices in the collection of consumer debts and to require debtors to act fairly in entering into
13 and honoring such debts. See Cal. Civ. Code § 1788.1(b).

14 34. Plaintiff avers that Defendant performed debt collection activities in an attempt to
15 collect a debt allegedly owed to it.

16 35. In those instances where Defendant preformed debt collection activities,
17 Defendant's conduct violated the RFDCPA.

18 36. Plaintiff is a "person" as that term is defined in Cal. Civ. Code § 1788.2(g).

19 37. Plaintiff is a "debtor" as that term is defined in Cal. Civ. Code § 1788.2(h).

20 38. Defendant is a "debt collector" as that term is defined in Cal. Civ. Code §
21 1788.2(c).

22 39. Defendant's conduct violated the RFDCPA in multiple ways, including but not
23 limited to:

- 24 a. Causing Plaintiff's telephone to ring repeatedly in connection with the
25 collection of a debt in violation of Cal. Civ. Code § 1788.11(d);

- b. Communicating, by telephone or in person, with the debtor with such frequency as to be unreasonable and to constitute an harassment to the debtor under the circumstances in violation of Cal. Civ. Code § 1788.11(e);
- c. Falsely representing that information concerning a debtor's failure or alleged failure to pay a consumer debt has been or is about to be referred to a consumer reporting agency in violation of Cal. Civ. Code § 1788.13(f).

40. As a result of Defendant's violations of the RFDCPA, Plaintiff is entitled to any actual damages pursuant to Cal. Civ. Code § 1788.30(a); statutory damages for a knowing or willful violation in the amount up to \$1,000.00 pursuant to Cal. Civ. Code § 1788.30(b); and reasonable attorney's fees and costs pursuant to Cal. Civ. Code § 1788.30(c) from Defendant.

WHEREFORE, Plaintiff, KEVIN DOBBS, respectfully prays for a judgment as follows:

- a. All actual compensatory damages suffered pursuant to 15 U.S.C. § 1692k(a)(1);
- b. Statutory damages of \$1,000.00 for the violation of the FDCPA pursuant to 15 U.S.C. § 1692k(a)(2)(A);
- c. Statutory damages of \$1,000.00, pursuant to California Civil Code § 1788.30(b);
- c. All reasonable attorneys' fees, witness fees, court costs and other litigation costs incurred by Plaintiff pursuant to 15 U.S.C. § 1693k(a)(3) and California Civil Code § 1788.30(c); and
- d. Any other relief deemed appropriate by this Honorable Court.

DEMAND FOR JURY TRIAL

PLEASE TAKE NOTICE that Plaintiff, KEVIN DOBBS, demands a jury trial in this case.

RESPECTFULLY SUBMITTED,

DATED: 03/04/11

KIMMEL & SILVERMAN, P.C..

By: Tara L. Patterson
Tara L. Patterson
Attorney ID # 88343
Kimmel & Silverman, P.C.
30 E. Butler Pike
Ambler, PA 19002
Phone: (215) 540-8888
Fax: 877-788-2864
Email: tpatterson@creditlaw.com

Aug 2 - Mrs Lightburg NCO

800-709-8625

Aug 3 10:15 AM

800 858-8256 Ext 219 (case) (00584370)

Aug 3 10:56 AM Mrs Lightburg NCO
800 709-8625 (Bristol system)

Aug 12 MR - NCO
Branel

800-413-0134

Aug 6 10:35 AM CB Meeker

209-944-9001 800-992-9000 8pm 8pm Mon-Thurs

Aug 10 12:40 PM (Pete Simon)

800-648-2997 EXT 168
4215-540-PP88 Kennel Kennel Law

Aug 11 12:40 PM Mr Brunel

800 413-0134 NCO

Aug 13

209-944-9001 800-399-2400 8am 8pm

Aug 13 3:39 PM (Richard) NCO

800 413-0134 recording collecta del

Aug 16 7:18 PM Mr Brunel NCO

800-413-0134

Aug 18 10:04 AM CB Meeker

209-944-9001 (Ext 16)



Aug 18 10:38 AM Mrs. NCO
800 709 8625 Langford

Aug 18 11:18 AM Mr NCO
800 413-0134 Brunel

Aug 19 11:19 AM Nicole NCO
800 709 8625 Terwin

Aug - Well-Forgo Swana (Wanda Recovery)
800 289-8804 909-941-5165 directly
752 8533 Ext 6517

Aug 20 12:42 Mrs NCO
Langford
800 709-8625 ref - DMV 201

Well Fargo Swana N.

→ Unknown ID NCO 11:50 AM 9/10
Gocho Acc